Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Federal-State Joint Board on Jurisdictional)
Separations Seeks Comment on Communications) CC Docket No. 80-286
Assistance For Law Enforcement Act (CALEA)) ET Docket No. 04-295
Issues)

COMMENTS OF GVNW CONSULTING, INC.

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Summary

CALEA is a federal requirement, not a requirement of many of the states, and has not been requested by the majority of the states where GVNW CALEA client carriers operate. While CALEA is a worthwhile public policy goal, and may ultimately be used by many law enforcement agencies, GVNW has learned from several informal contacts with local law enforcement agencies that they were either not aware of CALEA or had no plans to implement it due to cost. Although this is anecdotal evidence, it serves to show that there is currently not a large demand from local law enforcement agencies for CALEA in the areas served by the small carriers GVNW represents.

GVNW surveyed a sample of our clients regarding the nature of surveillance requests. We discovered that, out of 59 small carriers and 199 wire centers included in the survey response, there have been three requests for surveillance in the 2000-2003 time period. All three of these were requested by US Government agencies, two by the FBI and the third from a Federal Agency that required the company to sign a non-disclosure agreement regarding the surveillance. There were no requests for surveillance by state or local law enforcement agencies.

The cost of CALEA has been high to most small carriers due to vendor requirements that expensive generic software upgrades be purchased in order

to operate the CALEA feature[1]. While the funding provided by the Department of Justice to vendors to develop the CALEA feature ostensibly covered the cost of development of CALEA, and resulted in no, or very low charges to the carrier for the CALEA feature itself, the cost of the underlying generic upgrade was often significant. In one case, the vendor required that the entire central processing hardware also be replaced to support the CALEA upgrade.[2] In many cases, the carrier had no requirement for the other features offered in the generic software upgrade, and would not have purchased the generic upgrade had it not been for the CALEA requirement. The cost of the generic upgrade in these cases should be recoverable as part of the CALEA cost.

In other cases, the Department of Justice has determined not to fund the upgrade to a switch or feature used by small carriers at all.[3] In these cases, the features desired by law enforcement are either not available or, since CALEA costs are not covered by funding for DOJ to the vendor, the cost

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[1] GVNW Comments in ET No. Docket 04-295 – Attachment A, Pages 1-4

[2] In order to implement the CALEA feature in the Nortel DMS 10, the predominant switch used by small carriers, the carrier was require to update the generic software from the 4XX generation to the 5XX generation. Costs often ran above $100,000.00 per switch, which resulted in significant cost per customer when spread over the small number of customers served by the switch. Similarly, Redcom requires that the MDX switch be upgraded to the MDX-I version in order to provide CALEA compliance. This upgrade requires replacement of much of the switch hardware. GVNW clients in Alaska use the Redcom switch extensively.

[3] DOJ has to date not funded development of dial-out CALEA intercept operation on the Nortel DMS 10. To date, Nortel has not developed this feature, which would substantially lower the cost of intercepts to law enforcement agencies in rural areas by eliminating the need to lease a dedicated line from the switch for delivery of CALEA information. Similarly, the DOJ has not funded development of the CALEA feature on the Redcom switch.

of CALEA to the carrier is higher than if the vendor's costs had been funded by DOJ.

In all cases, the cost of CALEA to rural customers has been increased. Carriers should be allowed to recover these costs through a cost-recovery mechanism.

CALEA is a great benefit to federal law enforcement in protecting the public and to achieving a level of national security. As such, it benefits all citizens, not only customers of carriers that implement CALEA. CALEA is a social policy, not a business requirement of carriers in order to offer economical service to their customers.

Introduction and Background

GVNW Consulting, Inc. (GVNW) is a management consulting firm that provides a wide variety of consulting services, including regulatory support on issues such as jurisdictional separations, universal service, advanced services, and access charge reform for communications carriers in rural America. The purpose of these comments is to respond to the Public Notice that was issued as DA 05-535. In this proceeding, the Joint Board has requested comments on issues relating to the Communications Assistance for Law Enforcement Act (CALEA).

Allocation of CALEA Costs

The Public Notice asks if CALEA-related costs should be allocated to a single category identified as CALEA. GVNW supports the approach of identifying the CALEA related costs and assigning them to a specific category. We do, however, believe that the costs should be separately identified between capital costs (investments) and operating costs (expenses). While we believe it is possible to isolate the CALEA-related costs in each of the existing accounts and categories, we believe it to be more cost efficient and more meaningful to have all of the investment related costs in one separations category in a plant account, and all expense related costs in the same separations category in an expense account. This approach will be discussed in more detail in the following sections and in the attached proposed rules.

Specific Rules Needing Changes

GVNW believes that changes should be made to Parts 32, 36, and 69. We believe Part 32 should be changed to put all CALEA related investments in Account 2210 and CALEA related operating expenses in Account 6210. Part 36 would be changed to specifically address the allocation of CALEA costs within Accounts 2210 and 6210. Part 69 would be changed to set up a specific CALEA cost category and the Account 2210 and 6210 allocations would be changed to address the assignment of the CALEA related costs. Part 69 would also be changed to address the filing of charges related to the CALEA cost category. (See Attachment 1 for our proposal related to each of these three Parts of the Rules and Regulations).

CALEA Revenue Assignment

GVNW believes the jurisdictional assignment of the revenues should be consistent with the jurisdictional assignment of the cost. Thus, we believe the Cost Recovery related to CALEA should be assigned to the interstate jurisdiction.

Jurisdictional Assignment of Circuit Based Capabilities

GVNW believes the costs associated with CALEA should be specifically identified in the Central Office Investment and Expense accounts and directly assigned to the interstate jurisdiction.

Jurisdictional Assignment of Packet Mode Capabilities

GVNW believes the costs associated with CALEA should be specifically identified in the Central Office Investment and Expense accounts and directly assigned to the interstate jurisdiction.

Interim Freeze of the Jurisdictional Separations Rules

GVNW believes the changes we recommend to the separations rules can be implemented immediately and will not adversely effect the separations freeze adopted by the Commission. In the Separations Freeze order which was released on May 22, 2001 in CC Docket No. 80-286, the Commission made it clear that direct assignments would continue through the freeze period and would not adversely impact the freeze. Specifically in paragraph 23, the Commission indicated ". . . the frozen factors shall not have an affect on the direct assignment of costs for categories, or portions of categories, that are directly assigned. Since those portions of facilities that are utilized exclusively for services within the state or interstate jurisdiction are readily identifiable, we believe that the continuation of direct assignment of costs will not be a burden on carriers, nor will it adversely impact the stability of separations results throughout the freeze."

Comments on Three Alternative Proposals for Jurisdictional Separations

As noted above, GVNW supports the direct assignment of CALEA costs to the Federal Jurisdiction. This in part is because it is a federal mandate, but also because the lack of current state and local activity related to CALEA for small rural telephone companies does not justify an allocation to the state jurisdiction.

While we support the direct assignment of CALEA costs to the interstate jurisdiction, we believe that in areas where CALEA activity may be high, there is an argument that the costs should be split between jurisdictions based on the jurisdictional nature of the activity (i.e. the activity associated with federal bureaus should be assigned to interstate and the activity initiated by state or local agencies should be assigned to the state jurisdiction.) We ask that if the Commission seriously considers this option that it set up appropriate thresholds in adopting the allocation rules. For example, if a company has less then ten related CALEA driven incidents (contacts), the cost would be assigned to the interstate jurisidiction. If the contacts are greater then ten, the costs are assigned to the state and interstate jurisdiction based on the relative number of contacts.

GVNW does not support a fixed factor allocation approach if such an approach would end up assigning costs to the state jurisdiction when there is no state or local CALEA activity in the company.

Conclusion

GVNW believes the costs associated with CALEA should be isolated in two specific accounts in the Part 32 accounting system. These costs should be directly assigned to the interstate jurisdiction in the Part 36 rules. These costs should be isolated in a new category in the Part 69 Access charge rules and recovered first from the United States Attorney General, and any amount assigned to the CALEA category not covered by payments from the Attorney General would be assigned to the Common Line element.

Respectfully Submitted,

electronically submitted via ecfs

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End of Comments – Please see Attachment 1 for proposed rules